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Investigation
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MEMORANDUM TO: James J. Jochum
Assistant Secretary
For Import Administration

FROM: Jeffrey May
Deputy Assistant Secretary
For Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Polyethylene Retail Carrier Bags from Thailand

Summary:

We have analyzed the case and rebuttal briefs of interested parties in the investigation of sales at less than fair value of Polyethylene Retail Carrier Bags (PRCBs) from Thailand. As a result of our analysis, we have made changes in the margin calculations for the final determination. We recommend that you approve the positions we have developed in the Discussion of the Issues section of the memorandum. Below is the complete list of the issues in this investigation for which we received comments and rebuttal comments by parties.

1. Allocation of Indirect Selling Expenses
2. Date of Sale
3. Foreign and Domestic Production
4. Surrogate-Value Information
5. Affiliated-Party Inputs
6. Inputed Interest on Long-Term Loans
7. Duty Drawback
8 Affiliations
9. Miscellaneous Cost Issues

10. Pre-Verification and Verification Corrections

Background:

On January 26, 2004, the Department published its preliminary determination in the above-captioned antidumping duty investigation. See Notice of Preliminary Determination of Sales at Less-Than-Fair-Value and Postponement of Final Determinations; Polyethylene Retail Carrier Bags from Thailand (69 FR 3552) (Preliminary Determination). See also Notice of Initiation of Antidumping Duty Investigations: Polyethylene Retail Carrier Bags from the People's Republic of China, Malaysia, and Thailand, 68 FR 42002 (July 16, 2003) (Initiation Notice).

We gave interested parties an opportunity to comment on the Preliminary Determination. We received case briefs on April 30, 2004, from the respondents, Thai Plastic Bags Industries Co., Ltd. (TPBI), Winner's Pack Co., Ltd. (Winner's Pack), and APEC Film Ltd. (APEC) (collectively the Thai Plastic Bags Industries Group (TPBG)), and Advance Polybag Inc., Alpine Plastics Inc., Universal Enterprise Inc. (Universal), and Universal Polybag Co., Ltd. (UPC) (collectively Universal)[1], and on May 3, 2004, from the Polyetheylene Retail Carrier Bag Committee and its individual members, PCL Packing, Inc., Hilex Poly Co., LLC, Superbag Corp., Vanguard Plastics Inc., and Inteplast Group, Ltd. (collectively the petitioners). We received rebuttal briefs on May 6, 2004, from both the respondents and the petitioners. The Department held a public hearing on May 14, 2004, at the request of the petitioners.

[1] Universal refers to the entire family of affiliated companies including producers of domestically produced PRCBs (i.e., Advance Polybag Inc., Alpine Plastics Inc., and Universal Enterprise Inc.). UPC refers only to the Thai production facility (i.e., Universal Polybag Co., Ltd.).

1. Allocation of Indirect Selling Expenses

Comment 1: The petitioners request that the Department recalculate Universal's U.S. indirect selling expenses (ISE) to include general and administrative (G&A) expenses incurred in the United States by Universal on behalf of sales of UPC-produced bags. The petitioners argue that Universal understates its ISE by reporting only its U.S. affiliate's selling expenses associated with UPC sales in the numerator of its factor calculation and none of its general, financial, or administrative expenses. In contrast, the petitioners argue, the denominator for the ratio included all sales revenue by the U.S. sales affiliate, regardless of whether it imported or produced the merchandise domestically or whether sales consisted of subject or non-subject merchandise. Because UPC reported all its sales as constructed export price (CEP) sales, the petitioners argue that Universal is required to include all of Universal's G&A expenses which were associated with sales in its ISE calculation. The petitioners point to Aramide Maatschappij V.o.F. v. United States, 901 F. Supp. 353, 360 (CIT 1995), to support their contention, where the U.S. Court of International Trade (CIT) stated that expenses of a "corporate-wide administrative nature (e.g., legal, audit, {and} personnel) were wrongly excluded from respondents reported expenses."

Universal argues that the Department should not make any adjustment to its reported ISE calculation. Universal states that its domestic facilities are engaged in the production and sale of merchandise produced in the United States. Universal asserts that it is not the Department's practice to include G&A expenses of domestic producers in its calculation of ISE, to deduct from CEP. The respondent asserts that, where the importer's functions go well beyond the simple resale of subject merchandise to include substantial production of subject merchandise in the United States, it is not

appropriate to label any of that company's G&A expenses as selling expenses.

Additionally, Universal asserts that its basis for reporting ISE is sound and acceptable to the Department. It contends that information in its combined income statement contains categories that appear under both selling expenses and administrative expenses but that there is no reason to believe that those expenses allocated to G&A should be considered selling expenses.

Department's Position: We have reviewed the information on the record and conclude that an adjustment to Universal's ISE ratio is not appropriate. Universal has reported appropriate G&A expenses associated with sales. Universal's ISE calculation excluded all G&A and financial expenses correctly.

Universal's financial statements separate G&A expenses from selling expenses. We have no reason to believe Universal's financial statements were unreliable in this respect. These financial statements were the basis for Universal's reported ISE. We have no evidence that the G&A expenses reported supported selling. Universal's financial statements segregated various expenses into selling, general, and administrative expenses, with some expenses appearing as both selling and administrative. Nothing on the record indicates that this division was unreasonable or otherwise incomplete. We find that in this case Universal's calculation of ISE was reasonable.

2. Date of Sale

Comment 2: In response to the Department's original questionnaire, Universal submitted its U.S. sales listing that reflected the use of the date of invoice as date of sale (sales listing A). After comment by the petitioners on the requirements contracts that Universal discussed in its response, Universal submitted another U.S. sales listings (sales listing B), for which it used date of contract as

date of sale.

The respondent argues that contract date is the better basis for date of sale and the Department should accept sales listing B as the proper sales listing to use in its calculations. Universal states that the bulk of its sales during the POI were made pursuant to requirements contracts with large retail-chain customers. Universal argues that the Department has found contract date to be date of sale under similar circumstances to those at hand: (1) the material terms of sale are set prior to the contract date; (2) no minimum quantity was set by the parties but the buyer agreed to stock its supply of the product in question exclusively from the respondents; (3) future price adjustments during the life of the contract are pegged against another publicly quoted price, in this case, for resin, the primary raw material (citing, among others, Cellular Mobile Telephones and Subassemblies from Japan: Final Determination of Sales at Less Than Fair Value, 50 FR 45447 (Oct. 31, 1985)).

The petitioners argue that invoice date is the proper basis for date of sale and urge the Department to use sales listing A for the final determination. The petitioners state that, according to the Department's regulations, there is a presumption that invoice date is the date of sale and that the respondent has not demonstrated that another date better reflects the date on which the exporter or producer established the material terms of sale. According to the petitioners, the Department's past practice is to use invoice date unless it is satisfied that the material terms of sale cannot change prior to the date of invoice. They cite SeAH Steel Corp. V. United States, No. 00-04-00157, 2001 WL 180259 (CIT Feb. 23, 2001), and Thai Pineapple Canning Indus. Corp. V. United States, No. 98-03-00498, 2000 WL 174986 (CIT Feb. 10, 2000). According to the petitioners, Universal itself did not believe the terms of its contract were set or binding for the duration of the contract. The petitioners

point out that the contracts in question contained periodic price-adjustment mechanisms and, based on Universal's March 8, 2004, response, at Exhibit 10, Universal sought additional renegotiation of the price with a customer, suggesting that the material terms of the contract were not set within the meaning of the regulations. Because of these two situations, the petitioners claim the price of the bags are not 'established' before the invoice date within the meaning of 19 CFR 351.401(i).

Department's Position: Section 351.401(i) of the Department's regulations provide that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. In this instance, the record evidence indicates clearly that the material terms of sale were set at the date of contract, including product specifications, ship-to locations, price, payment terms, and packaging. See See "CEP Sales Verification for UPC Polybag, Alpine Plastics, Inc. and Advance Polybag in the investigation of Polyethylene Retail Carrier Bags from Thailand," dated April 15, 2004, Universal Verification Report, at pp. 4-6 and Exhibits 5-7.

In its requirements contracts Universal agrees to supply customers with Universal product over a one- or two-year period. All the agreements in question are the result of internet reverse auction bids. As a pre-condition to participating in the auction, Universal agreed to certain contract terms applicable to the bid winner. These material terms include shipping locations, product specifications, payment terms, packaging, and other relevant criteria. Participation in the auction and submission of bids means that, should any bidder prevail in securing the contract, the bidder accepts the explicit terms laid out by the buyer as part and parcel of the contract. Universal's entry into the auction and its subsequent winning bids constituted valid contract offers to the customer. Once the bid was accepted

by the customer, Universal and the customer had entered into a valid contract.

The fact that the contracts in question include a condition that allowed for price-adjustment mechanisms to account for changes in the price of resin does not invalidate the use of contract date. The Department has accepted contract date as the date of sale where periodic price-adjustment mechanisms were set in the contract according to factors outside the parties' control. See Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico, 64 FR 14872, 14880 (March 29, 1999). In this situation, the parties set the price adjustment according to a publicly published index tracking the price of resin, which is an oil by-product and therefore subject to unpredictable market fluctuations. Nor do we find the petitioners' claim that because Universal approached one of its customers to re-negotiate the price of the merchandise during the life of the contract to mean that Universal perceived any flexibility in the terms of the contract. Once the customer refused to renegotiate, Universal continued to honor the terms of the original contract. There is no evidence on the record that Universal did not believe the terms of its contract were set or binding for the duration of the contract as claimed by the petitioners. In fact, the opposite is true; the record supports a determination that Universal honored the original terms of the contract for the contract's duration.

Likewise, the fact that there was no minimum quantity established in the contract does not mean the quantity was a material term that was not "established." Requirements-contract customers agreed to buy all their requirements from Universal for a fixed period of time. We have used contract date as the date of sale for requirements contracts without fixed minimum quantities in the past. See Porcelain on Steel Cookware from Mexico, Notice of Final Results of Antidumping Duty Administrative Review,

62 FR 25908, Comment 2 (May 12, 1997). In this instance all record evidence supports a finding that the material terms of sale were established at the time of contract. Therefore, the Department is satisfied that the contract date better reflects the date on which Universal established the material terms of sale. See 19 CFR 351.401(i). Accordingly, we have used sales listing B reflecting the contract date of Universal's sales in making our final determination.

3. Domestic and Foreign Production

Comment 3: The petitioners assert that, because a significant portion of Universal's sales to its customers were supplied with both Thai-made and U.S.-made bags and Universal charged the customer one preset price for the supplied bags and not different prices based on the origin of the bags, the Department erred by making a comparison of sales by Universal, UPC, and their affiliates' U.S. sales operation, to a constructed value that did not combine cost of production (COP) for Thai and U.S. production.

The petitioners allege that, by charging one price for the bags without accounting for the varying production costs based on country of manufacture, Universal's prices mask the true price of Thai-made merchandise by charging one price for both Thai-made and U.S-made bags. The petitioners point to the higher conversion and production costs to make bags in the United States versus Thailand, and they conclude that the cost difference should be reflected in the price of the bags, depending on origin. The petitioners contend that the Department must presume that the respondent priced sales according to its costs to produce merchandise. Thus, according to the petitioners, Universal should price its product according to the conversion costs incurred by the plant where the merchandise was produced, either Thailand or the United States. As such, the petitioners contend, the ultimate price or prices paid by the

customer would reflect that cost differential, thereby revealing the difference in value between the products attributable to the country of manufacture. The petitioners observe that the vast majority of Universal's U.S. sales are affected by this situation and contend that the sale price of bags was not the true value of the Thai product. Thus, the petitioners believe that Universal's prices should reflect the higher conversion costs associated with Universal's U.S. manufacturing facilities versus those of the Thai facility. As a result, the petitioners contend that a fair comparison of constructed value to U.S. price cannot be made because comparing this price to constructed value would be an apples-to-oranges comparison.

The petitioners claim that, making this comparison, the Department cannot calculate the most accurate dumping margin possible without adjusting for the premium associated with U.S.-made merchandise. The petitioners propose that the Department use information obtained at the verification regarding the respective conversion costs of Universal's Thai and U.S. production in order to adjust the U.S. sale price before making the comparison to constructed value.

Universal asserts that, whether produced in Thailand or the United States, the bags it provided to the customer were identical. Universal states that, because the merchandise was identical, the customer placed no premium or added value owing to the source of the bags. Universal also asserts that, while production costs are a factor, they are not the sole basis for its sale price in the United States. In this case, Universal explains, the prices it set for the bags were the result of competitive bids against other producers at blind internet auctions in order to win long-term contracts. In the alternative, Universal also points out that the petitioners' calculation regarding conversion costs in the United States and Thailand are in error and exaggerate the true cost differences between product from each country.

Department's Position: The record in this investigation does not support the contention that the customers which received both U.S.-produced and Thai-made bags in fulfillment of Universal's contractual obligations placed a price premium on the bags produced and sold in the United States during the period of investigation (POI). Nothing on the record suggests that certain customers anticipated or expected Universal to provide them with U.S. product or that they perceived any difference in the value or quality of the U.S. product when it was supplied to supplement the supply of Thai-made bags. While these customers indicated that they wanted to know the country of origin of the bags Universal used to supply the contract in their requests for quotation (RFQ), nothing on the records indicates that they stipulated that any percentage of bags had to be from any particular country or source or that knowing the country of origin was anything more than gathering information. In fact, one RFQ states: "Because (the customer) is permitting 100 percent of its product to be imported..." See Universal Verification Report at Exhibit 6. During verification, company officials told us that they were free to supply these customers with merchandise from just one source, UPC, that their bids for those contracts were premised on supplying the customers with bags from the Thai factory, and that there was no legal or contractual obligation on Universal to supply domestically produced bags. When Universal supplied U.S. bags to some customers, no change was made to the price nor was there any objection by the customer.

The petitioners believe that the respondent must set prices according to conversion and production costs alone. See Case Brief for the petitioners at 19. The record indicates that Universal did not consider production costs alone when setting the price for the bags Universal sold to its

customers during the POI. Universal landed all contracts involving the merchandise in question through internet-based auctions. The auction itself involved numerous parties in competitive bidding for the contract. The bidding was blind, which meant that each bidder could only see its bid and whether its bid was the low bid. At verification, "Universal officials explained that they determined the company's bids, and its minimum bid, by discussion among several company officials, including the company president." See Id. at 5. Thus, it is clear from the record evidence that, while conversion costs were a factor, industry competition, business strategy, negotiations with the customer, and market forces not within Universal's control played a significant role in determining the bid amounts. Therefore, Universal has demonstrated that the resulting prices were not a simple application of production costs but rather the result of a process with multiple factors influencing the outcome. To the extent that the conversion costs may have influenced Universal's bidding, the evidence on the record shows that they made bids predicated on the basis of supplying the customer with 100 percent Thai product. During the course of the contract, when Thai bags were not available, Universal supplied the customers with U.S. bags in order to ensure continuity of supply. There is no evidence to indicate that its bids were based on the cost of U.S.-produced bags.

Accordingly, we find that nothing on the record indicates that the price of U.S.-supplied bags was integrated into the final price upon which the parties agreed, nor does the record support the petitioners' allegation that conversion costs are the sole basis upon which Universal based its prices. Therefore, for this final determination, we have made no changes to Universal's reported prices or UPC's costs as the petitioners suggest.

4. Surrogate Value Information

Comment 4: As explained in the Preliminary Determination, because UPC had no viable home or third-country market during the POI, the Department could not determine selling, general, and administrative (SG&A) expenses and profit under section 773(e)(2)(A) of the Act, which requires that sales be made by the respondent in question in the ordinary course of trade in a comparison market. Universal argues that the Department should use the data provided by the other three responding companies, which comprise TPBG, to value UPC's constructed-value (CV) selling expenses and profit, pursuant to section 773(e)(2)(B)(ii) of the Act, rather than using the financial statements of Thantawan Industry Public Co., Ltd. (TIPC), under section 773(e)(2)(B)(iii). Universal argues that use of TIPC's data in the Preliminary Determination distorted UPC's ISE. Universal asserts that data from the other respondents is the most accurate and complete data on the record regarding the selling expenses and profit earned on sales of PRCBs in Thailand. Universal contends that there are no other respondents in this investigation and that the financial statements submitted by the petitioners do not apply narrowly to the subject merchandise nor do they provide detail sufficient to calculate CV selling expenses and profit on PRCBs in Thailand.

Universal asserts that non-subject merchandise accounts for more than two-thirds of TIPC's revenue. Universal points out that drinking straws account for 24.4 percent of TIPC's revenue and reclosable plastic bags (which Universal assumes are non-subject food-storage and sandwich bags) account for 44 percent of TIPC's revenue in 2001. Universal asserts that PRCBs fall under "HDPE General Bags" on TIPC's financial statements, which accounts for less than 30 percent of revenue, but this category also includes garbage bags and gloves. Universal contends that drinking straws and reclosable plastic bags are more likely to be sold to a larger number of customers through different

channels of trade and incur more advertising expenses than PRCBs. Universal asserts that such activities generate a very different ratio of total selling expenses to cost than is the case for subject merchandise.

Universal argues that TIPC's financial statements do not provide sufficient information to permit an accurate calculation of TIPC's ISE. Universal states that TIPC's statements provide a single number for selling expenses, but there is no detailed data to be able to segregate and exclude movement expenses, storage expenses, and direct selling expenses. Universal asserts that the Department assumed incorrectly in the Preliminary Determination that all of TIPC's selling expenses were indirect. According to Universal, this error led to the Department's use of an absurdly high ISE figure in the Preliminary Determination. Universal compares the CV ISE used in the Preliminary Determination to UPC's U.S. selling expenses and to TPBG's ISE, and it claims that the results confirm that the number used in the Preliminary Determination overstated the ISE. Universal observes that UPC's U.S. ISE and TPBG's ranged public data are of the same magnitude. It also comments that the Malaysian PRCBs producer experienced similar ISE on sales of PRCBs in Malaysia, based on ranged public data.

Universal asserts that disclosure of the average ISE and profit rate for the three companies making up TPBG would not disclose the proprietary data of any of these three manufacturers. Universal states that the statute contemplates use of the "weighted average of the actual amounts incurred and realized by {other} exporters or producers that are subject to the investigation" to determine selling expenses, and profit. It states that the Department has a policy of calculating weighted-average selling expenses and profit for other respondents under section 773(e)(2)(B)(ii) of

the Act where there are two or more companies with viable home markets. According to Universal, the Department is justified in declining to rely on section 773(e)(2)(B)(ii) if there is only one company with a viable home market because this would disclose business proprietary data of that respondent. Universal asserts that in this case, there are three separate companies supplying data to the Department that can be weight-averaged. Universal argues that while the Department justified its decision not to use these companies' weighted-average data on the grounds that it had collapsed these companies into one respondent, these are three separate companies that have responded to the Department's questionnaire, each with its own financial statements and data. Universal points out that section 773(e)(2)(B)(ii) of the Act speaks of expenses incurred and realized by {other} exporters or producers, and it does not speak of respondents. Universal asserts that revealing the three companies' weighted-average data does not disclose the proprietary data of any of the individual companies. Universal argues further that, if the Department continues to be concerned about the disclosure of business proprietary data, it should make that data and the margin calculation program proprietary and release it only to counsel for Universal under administrative protective order (APO). Universal recognizes that this means that it will not receive the full details of the margin calculation but only the final margin the Department calculates. According to Universal, this would allow the Department to use the only accurate and reliable proprietary data on the record concerning selling expenses and profit earned on sales of the subject merchandise in Thailand. Universal asserts that it would not be able to determine the amount of TPBG's selling expenses versus TPBG's profit because there are an infinite number of combinations of these numbers to produce any given margin outcome. Universal asserts that, under this option, the data would receive more protection than required by the regulations.

Universal then argues that, alternatively, the Department should use ranged public information in TPBG's responses to value UPC's ISE and profit. It argues that earlier decisions by the Department support the use of ranged public data when the proprietary data is unavailable to it. Universal uses TPBG's ranged public G&A rate and interest rate and Winner's Pack's ranged public profit rate (3.33 percent) to estimate that TPBG's ISE as a percentage of cost of goods manufactured cannot exceed 0.97 percent. UPC asserts that, even if this data were increased by the full 10 percent to account for ranging (giving 1.07 percent), this is far more accurate than TIPC's data, which approached 24 percent.

Finally, Universal asserts that, in the event that the Department does not use TPBG's proprietary or ranged public data as the basis for CV selling expenses and profit, the Department should use the ranged public data submitted by Bee Lian in the concurrent Malaysian PRCBs investigation under section 773(e)(2)(B)(iii) of the Act which permits the determination of selling expense and profit based on any other reasonable method. Universal states that Bee Lian is a producer of the subject merchandise and the expenses in question were calculated based on Bee Lian's sales of subject merchandise in its home market of Malaysia. Universal argues that Bee Lian's data is superior to TIPC's data because Bee Lian's ISE are incurred only on sales of subject merchandise and have been stripped of all movement, storage expenses, and direct selling expenses that should not be included in Universal's CV. Universal asserts that only if Winner's Pack's profit data is not used in the final determination should the Department rely on TIPC's 2002 financial statements which cover more of the POI than the 2001 financial statements used in the Preliminary Determination.

The petitioners respond that the Department should continue to use TIPC's 2001 financial

statements for CV ISE and profit. The petitioners assert that the Department cannot use the data of the only other respondent in the investigation, TPBG, because doing so would reveal business-proprietary information to Universal, which is prohibited by section 777(b)(1) of the Act, and Universal concedes this point. The petitioners assert that the Department has no choice but to utilize any other reasonable method for valuing selling expenses and profit, as authorized by section 773(e)(2)(B)(iii) of the Act. The petitioners claim that, while Universal objected to the amounts used in Preliminary Determination, Universal only offered unworkable alternatives that must be rejected.

The petitioners contend that this case only involved two participating Thai respondents and Universal should have known that the Department would need an alternative source for CV selling expenses and profit. The petitioners assert that Universal was obliged to place on the record information that could be used for that purpose. The petitioners maintain that, instead, Universal proposed using the average selling expense and profit ratios of the three members of TPBG. The petitioners contend that, because these entities are all part of TPBG, a single respondent, and do not hold themselves out to be separate companies, that recommendation has no merit.

The petitioners assert that TIPC is an appropriate surrogate for selling expenses and profit pursuant to section 773(e)(2)(B)(iii) of the Act. The petitioners argue that in the Final Determination of Sales at Less than Fair Value: Sulfanilic Acid from Portugal, 67 FR 60219, and accompanying Issues and Decision Memorandum at Comment 5 (September 25, 2002), the Department stated that, in determining a profit rate under alternative (iii), the Department usually considers several factors including the similarity of the potential surrogate companies' business operations and products to the respondent's, the extent to which the financial data of the surrogate company reflects sales in the United

States as well as the home market, and the contemporaneity of the surrogate data with the POI. The petitioners contend that TIPC produces a significant quantity of subject merchandise and the remainder of the merchandise is of similar merchandise and, therefore, the first criterion is met. The petitioners maintain that TIPC did not export to the United States and had home-market sales. Finally, the petitioners argue that TIPC's 2001 financial statements are only nine months removed from the POI and are thus contemporaneous. The petitioners argue that the Department should not use TIPC's 2002 financial statements as submitted by Universal because they do not include the auditor's report, accompanying notes, or schedules cited therein. According to petitioners, this makes the financial statements incomplete and it is impossible for the Department to judge their credibility and reliability. The petitioners assert that TIPC's 2001 audited financial were complete.

The petitioners argue that, contrary to Universal's assertion, it is clear from TIPC's financial statements that its primary business is the production of subject merchandise. According to the petitioners, the fact that it might also produce drinking straws and gloves does not impair its usefulness as a surrogate and Universal has not demonstrated that reclosable bags are not subject merchandise. The petitioners point out that in Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349, and accompanying Issues and Decision Memorandum at Comment 8 (September 27, 2001) (Pure Magnesium), the Department found that its chosen surrogate had business operations and products sufficiently similar to the respondent's even if the chosen surrogate did not produce any subject merchandise. The petitioners argue that Universal's challenges to TIPC's data stand in stark contrast to Universal's statements in the letter submitting TIPC's 2002 financial statements. The petitioners assert that UPC has not explained why TIPC was an acceptable surrogate

three months ago but is unacceptable now.

The petitioners argue that TIPC's selling-expense information is adequate to serve as a surrogate for Universal's experience. The petitioners point out that, although Universal argues that the Department is precluded from segregating movement, storage, and direct selling expenses from TIPC's combined selling expense amount, the Department calculated and removed amounts for movement and G&A, based on Universal's experience, in the Preliminary Determination. The petitioners assert that the Department could have also removed direct selling expenses, based on the methodology petitioners submitted on January 6, 2004, assuming half of the selling expenses were direct.

The petitioners assert that Universal has not supported its assertions that TIPC's sales of non-subject merchandise generate a very different ratio of total selling expenses to cost than is the case for subject merchandise. The petitioners contend that TIPC's financial statements do not indicate that TIPC sells its products to a larger number of customers or through different channels of trade or what it incurs more advertising costs. The petitioners maintain that TIPC's financial statements state that most of its production is made to order, identify only a single domestic customer, and state that one of its affiliates is responsible for the marketing of reclosable bags and flexible drinking straws.

The petitioners assert that TPBG has consistently characterized itself and its three factories as a group which happened to maintain separate financial records during the POI. The petitioners state that, because TPBG has held itself out to be a single entity and the Department has treated it that way, the combination of the factories' expenses and profit ratios is already accomplished in the responses and in the Department's calculations. If these ratios were inserted in Universal's calculations, the petitioners contend, Universal would have direct access to highly sensitive business-proprietary information of its

direct competitor.

The petitioners argue that the Department is required by its regulations to provide Universal with a full disclosure of its dumping calculation and Universal's waiver of its right to disclosure does not protect TPBG's sensitive business-proprietary information. The petitioners state that, using a simple formula and the data it submitted, Universal could calculate the sum of TPBG's selling expenses percentage markup and profit percentage markup. The petitioners contend that this would reveal TPBG's business-proprietary data.

The petitioners argue that the Department has never used ranged public data to value selling expenses and profit pursuant to sections 773(e)(2)(B)(iii) of the Act. The petitioners maintain that the cases cited by Universal, where the Department used ranged public data to gap fill, were under different provisions of the statute. The petitioners state further that several of the decisions cited by Universal involve the application of facts available pursuant to section 776(a) of the Act. The petitioners assert that, in Stainless Steel Plate in Coils from Belgium 66 FR 56272 (November 7, 2001), the Department used publicly available financial statements instead of ranged data. The petitioners argue further that one of Universal's references was a case determined under the Department's non-market-economy methodology. See Melamine Institutional Dinnerware Products from the People's Republic of China, 62 FR 1708, 1712 (January 13, 1997) (Dinnerware from PRC). The petitioners assert further that in Dinnerware from PRC, the Department recognized the limitations of ranged public data, stating "insofar as publicly ranged data may be imprecise, it would be speculative to rely on such data as an accurate measure of whether sales are below cost and outside the ordinary course of trade." The petitioners maintain that, while Universal does not cite any Department precedent

for the Department to use ranged public data to value CV selling expenses and profit, there is substantial precedent to support the Department's use of the financial statements of a surrogate company. The petitioners also maintain that the Department rejected Universal's February 9, 2004, request that it ask TPBG to revise and resubmit its public, ranged data from its financial statements so that Universal could obtain information to calculate selling expenses, G&A expenses, and profit.

Finally, the petitioners disagree that the Department should use selling expense and profit information submitted in the Malaysian investigation because it contradicts the Department's strong preference to avoid using ranged public data and to base these ratios on the home-market experience. The petitioners maintain that section 773(e) of the Act seeks a home-market profit experience, citing to Pure Magnesium, among other cases. The petitioners state further that, when the CIT considered the question of whether the Department could mix home-market and third-country sales when applying this section, the CIT expressly allowed only some non-home- market sales data, citing to Geum Poong Corp. V. United States, 163 F. Supp. 2d 669, 675 (CIT 2001), 163 F. Supp. at 676.

Department's Position: We have evaluated the information on the record and, for the final determination, we have decided to use ranged public data from the other respondent, TPBG, to calculate CV selling expenses and profit for normal value we calculated for Universal.

In situations where we cannot calculate selling expenses and profit under section 773(e)(2)(A), section 773(e)(2)(B) of the Act sets forth three alternatives. The Statement of Administrative Action states that "section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods" (Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, at 840 (1994) (SAA)). To determine the most viable

alternative the Department has evaluated the options available under sections 773(e)(2)(B)(i)(ii) and (iii) of the Act. Section 773(e)(2)(B)(i) of the Act specifies that selling expenses and profit may be calculated based on "actual amounts incurred by the specific exporter or producer . . . on merchandise in the same general category" as subject merchandise. Universal does not produce any products other than the subject merchandise. Alternative (ii) of section 773(e)(2)(B) provides that SG&A and profit may be calculated based on "the weighted average of the actual amounts incurred and realized by {other} exporters or producers that are subject to the investigation." We found in the Preliminary Determination that, because there is only one other respondent in this case, we could not calculate selling expenses and profit based on section 773(e)(2)(B)(ii) of the Act because it would reveal the business-proprietary information of the other respondent, TPBG. While Universal has continued to suggest that the Department can use the combined data of the three companies that form the respondent TPBG, the Department considers TPBG to be one entity for purposes of this investigation and, therefore, to use the information of the three combined companies is to reveal that respondent's proprietary information. As discussed above, TPBG is composed of three companies, which, according to TPBG's section A response, were set up separately for tax-planning purposes under Thai law and, although legally separate, they share common owners, directors, and operational activities and are run as a group and share certain resources in common. They consider themselves to be one entity and, in their responses to the Department, they did not provide separate sales databases for each company, but one home-market and one U.S. database for the group, each of which does not distinguish which company manufactured the product sold. Therefore, we cannot use TPBG's actual information since it would reveal proprietary data of the sole other respondent.

We have not accepted Universal's proposal to use TPBG's proprietary data and release the calculations only to its counsel under APO. If Universal received only TPBG's profit margin, it would be able to determine proprietary selling expenses and profit information. While the amount Universal could ascertain would be TPBG's amount for the combined selling expenses and profit, given the small amount of TPBG's selling expense based on the ranged public data, it may be possible for Universal to discern TPBG's proprietary profit data.

Therefore, the only statutory option available to the Department to calculate CV selling expenses and profit for CV for Universal is under section 773(e)(2)(B)(iii) of the Act. This section allows the Department to use "any other reasonable method" to calculate CV selling expenses and profit for CV, provided that the amount for profit does not "exceed the amount normally realized by exporters or producers . . . in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise." In the Preliminary Determination, we used the 2001 financial-statement information of another Thai producer, TIPC, for sales of plastic products including PRCBs to calculate CV selling expenses and profit for CV. Because selling expenses are not separated in TIPC's financial statement, for the Preliminary Determination we deducted UPC's reported G&A rate from TIPC's SG&A rate because we had no reason to believe that UPC's reported G&A expenses were unreliable. As stated above, section 772(e)(2)(B)(iii) of the Act allows the Department to use other reasonable methods provided profit does not exceed the amounts normally realized by exporters or producers of merchandise in the same general category of products as the subject merchandise. Given this, TIPC's financial statements would be a suitable source normally because it produces merchandise in the same general category, even if its

production is not entirely or even mostly subject merchandise.

For the final determination, we have used TPBG's ranged public data to calculate CV selling expenses and profit. While ranged public data, by its nature, is not precise, it is the best information we have on the record of this investigation. The Department has used ranged public data in certain circumstances in the past, such as when it used a public summary from the questionnaire response to calculate a respondent's surrogate profit. See Dinnerware from PRC, 62 FR at 1712 (January 13, 1997). Even though the petitioners imply we cannot use this case as support because it is a non-market-economy case and because it states that we have recognized the limitations of ranged public data, we find that the case can apply equally to market-economy cases as well as non-market-economy cases. In Dinnerware from PRC, while the Department recognized the limitations of ranged public data, the Department used it for the calculation but took into consideration its limitations to decide which parts to use ("(a)ccordingly, for the purpose of deriving a surrogate profit percentage, we have used all sales in the public version, rather than excluding allegedly below cost sales").

Even if the Department has not used ranged public data to calculate CV selling expenses and profit in the past, as petitioners have argued, this does not preclude the Department from using this type of data now. Because ranged public data can be plus or minus 10 percent of the actual value, to be sure we have captured the entire selling expense and profit values, we have increased the ranged public data by 10 percent for use as CV selling expenses and profit in calculating the margin for Universal.

As we stated in the Preliminary Determination, because we do not have any further information regarding profit on the same general category of merchandise other than that of the one other respondent in this case, we are not able to quantify the "profit cap" described in section

773(e)(2)(B)(iii) of the Act without revealing proprietary information of TPBG, as discussed above. The SAA anticipates such situations and directs that, where the Department cannot calculate a profit cap, the Department may apply section 773(e)(2)(B)(iii) of the Act on the basis of the facts available. Therefore, we have not calculated a "profit cap" for the instant determination.

5. Affiliated-Party Inputs

Comment 5: The petitioners argue that the Department should adjust prices Universal paid to its affiliate for white and blue masterbatch (color concentrate). The petitioners compared the prices that Universal paid for white and blue color concentrate purchased from Universal's affiliated party to the prices Universal paid to unaffiliated parties for the same color concentrate. The petitioners assert that, based on this comparison, the Department must adjust the transfer prices to reflect the market prices paid to unaffiliated parties pursuant to the "transactions disregarded" rule in section 773(f)(2) of the Act. The petitioners cite several cases in support of their argument and provide a calculation of color-specific and aggregate adjustment factors to UPC's reported direct material costs. The petitioners assert that either set of factors will accomplish the objective of increasing UPC's color-concentrate costs to reflect the market price for its purchases from its affiliate Universal.

Universal claims that the Department should not adjust the transfer prices for blue and white masterbatch. Universal asserts that the "transactions disregarded" provision set forth in section 773(f)(2) of the Act does not require the Department to adjust these transfer prices. Universal points out that the "transactions disregarded" provision states that a "transaction directly or indirectly between

affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration." Universal asserts that the CIT has found that the "transactions disregarded" provision is "permissive" and, therefore, does not mandate or require that the Department use the highest of transfer price, market price, or COP in valuing affiliated-party inputs. Universal cites SFK v. United States, 24 CIT 822, 116 F. Supp. 2d 1257 (2000), in support of its argument. Universal asserts that there is no evidence on the record in this case showing that the transactions between Universal and its affiliates for the sale of color concentrate should be disregarded, particularly when the affiliate is not a manufacturer or producer of masterbatch. Universal argues that the affiliate purchased masterbatch from unaffiliated producers and resold the material to Universal at cost plus shipping expenses. Universal asserts that, although the price the affiliate paid for white and blue masterbatch may have been lower than the price that Universal paid to purchase the same product from other suppliers, such a finding would not mean that the transactions were not at arm's-length prices. Universal contends that the Department has the discretion to consider the other reasons that the prices may have been lower, such as the fact that Universal may have access to better prices since it purchases in larger quantities than its affiliate and that there are differences in market price between the United States and Asia.

Universal contends that, regardless of how the Department resolves this issue, it should disregard the difference in price between white masterbatch UPC purchased from unaffiliated parties and white masterbatch UPC purchased from Universal because the difference is insignificant and the prices UPC paid to Universal were often above the prices paid to unaffiliated parties. Accordingly,

Universal states that the Department should exercise its discretion to disregard the minor overall difference calculated by the petitioners.

Department's Position: Section 773(f)(2) of the Act allows the Department to test whether transactions between affiliated parties are at arm's-length prices. The Department tests the prices of these affiliated-party transactions, regardless of whether the affiliated supplier is a producer of the input because we recognize that the parties' affiliation can affect pricing even though the supplier is not a producer. Thus, although we have discretion to use the transfer price from an affiliate when it is lower than the market price, we found no basis to exercise that discretion in this case. In keeping with our normal practice, we have adjusted UPC's costs to value affiliated-party inputs at the higher of transfer price or market price for masterbatch, which is not a major input, for the final determination. We made comparisons between the affiliated-party transfer price and unaffiliated-party market price on a color-specific basis to ensure the prices that we compared were for the same or similar products.

Comment 6: The petitioners argue that the Department should use the major-input rule to value the inputs that TPBG purchased from an affiliated reseller during the POI. The petitioners state that, while section 773(f)(3) of the Act was applied appropriately to these transactions in the Preliminary Determination[2], in the cost verification report[3] the Department questioned its use since the affiliated suppliers are merely resellers, not producers of the major input. The petitioners believe that the focal point of the Department's interpretation of section 773(f)(3) of the Act in its cost verification

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[2] Memorandum from Heidi K. Schriefer through Theresa L. Caherty to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination," dated January 16, 2004, at 1.

[3] Memorandum from Heidi K. Schriefer through Theresa L. Caherty to Neal M. Halper, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Thai Plastic Bags Industries Group," dated March 31, 2004, at 2 (Cost Verification Report).

report is misplaced. The petitioners argue that, while the provision does state that the rule applies "in the case of a transaction between affiliated persons involving the production by one such person of a major input," the clear focus of the provision is whether the input is a major input, not whether the affiliate was a producer of the input.

In support, the petitioners cite the Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada, 64 FR 17324, 17335 (April 9, 1999) (SSRW from Canada), where the Department disagreed with the respondent's narrow definition of the term 'producer' and applied the major-input rule to purchases from an affiliated reseller. Further, they contend, the Department stated that "{t}he intent of this section and the related regulations is to account for the possibility of shifting costs to an affiliated party. This possibility arISE when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier." The petitioners comment that resin accounts for a significant portion of the cost of manufacturing the merchandise under consideration. Consequently, the petitioners argue that the Department should apply the major- input rule to TPBG's purchases of resin from its affiliated reseller for the final determination.

The respondent argues that, because the affiliate is not a producer of the input, the transactions between TPBG and its affiliate are not subject to the major-input rule. According to the respondent, section 773(f)(3) of the Act applies only when there is "a transaction between affiliated persons involving the production of one of such persons of a major input to the merchandise." The respondent cites NSK v. U.S., 245 F. Supp. 2d 1335, 1341-42 (CIT 2003), where the court affirmed that the Department should apply section 773(f)(3) of the Act when the transactions between affiliated parties

involve a producer of the major input. Thus, the respondent contends that simply supplying the major input is not sufficient to meet the requirements of the statute. The respondent states that the sales and cost verification reports confirm that the affiliated supplier is not a producer but simply a reseller of the major input. Therefore, the respondent reasons, because the supplier is not a producer of the major input, there can be no cost of production for such an input.

The respondent acknowledges that, while the transactions are not subject to the major- input rule, they would be subject to section 773(f)(2) of the Act (i.e., "transactions disregarded"). Therefore, the respondent states that, to the extent the price paid to unaffiliated companies is higher than the average price paid to all companies, then the Department should revise the valuation of resin costs to reflect open market conditions.

Regarding the petitioners' citation of SSRW from Canada, the respondent argues that the case actually supports TPBG's position on the application of the major-input rule in this investigation. TPBG states that in SSRW from Canada the Department compared only transfer and market prices when implementing the major-input rule for the respondent's transactions with an affiliated reseller. TPBG argues that the Department did not examine the cost of production because the affiliate did not produce the input. Furthermore, TPBG concludes that, by not examining the unaffiliated producer's cost of production (i.e., the cost for the affiliated reseller's supplier), the Department has recognized that the purchase price paid by the affiliated reseller would be higher than the unaffiliated producer's cost. Likewise, TPBG claims that its affiliated reseller's purchase price would be higher than the resin producer's cost. Furthermore, TPBG claims that the transfer price paid by TPBG reflects its affiliated reseller's purchase price plus a markup. Therefore, the respondent concludes, the transfer price it paid

is higher than the resin producer's cost of production. Consequently, the respondent believes that, regardless of whether the Department applies the major-input rule or the transactions-disregarded rule, the result would be the same - the Department should apply the higher of transfer or market price for TPBG's transactions with its affiliated supplier in the final determination.

Department's Position: Upon review of the facts in this investigation, we have applied section 773(f)(2) of the Act (i.e., transactions-disregarded rule) rather than section 773(f)(3) of the Act (i.e., the major-input rule) to the transactions between TPBG and its affiliated reseller for the final determination. The statute states clearly that, "{i}f, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2)." See section 773(f)(3) of the Act. The cost verification report identifies clearly that TPBG's affiliate is a reseller, not a producer. Furthermore, while the Department agrees with the petitioners' argument that the purpose of the major-input rule is to account for the possibility of a respondent to shift costs to an affiliated party, the Department finds that this goal is preserved through the application of the transactions-disregarded rule, whereby the transfer price paid to an affiliated party is compared to a market price and if necessary, "disregarded" in favor of a higher market price.

While the statute does not require the Department to obtain the cost of production of the input since the affiliate is not a producer of the input, the Department is directed to obtain a market price for

comparison with the transfer price. In conducting the cost verification, Department found that the affiliate purchases resin for the respondent when extended payment terms are needed. See Cost Verification Report at 21. Because the affiliated reseller is providing a service related to the acquisition of the input as well as the input itself, the selling, general and administrative expenses of the affiliate must be included. See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Korea (December 29, 1999), 64 FR 73196, 73208 (CTL from Korea). In CTL from Korea, the Department concluded that the "trading company purchases the material, takes title to the item, and provides for the sale and transport of the good to the affiliated respondent." Therefore, the Department found that it needs to account for those activities when conducting its comparison under section 773(f)(2) of the Act. Likewise, in this instance, because the affiliated reseller is providing a service in addition to the input, the Department must ensure that the market price it uses for comparison incorporates the activities related to both the service and the input. Consequently, we have valued the inputs received from the affiliated reseller at the higher of the adjusted market price (i.e., the affiliate's average acquisition cost plus SG&A) or transfer price.

6. Imputed Interest on Long-Term Loans

Comment 7: Universal argues that the Department should revise its calculation of imputed interest on Universal's long-term loans from its affiliates. Universal provided a revised calculation of the interest that should be imputed on the long-term loan extended to Universal by its affiliates. Universal argues that its calculation takes into account the actual number of days that the principal amount of the loan was outstanding, as the Department verified in Thailand. Universal explains that it computed the number of days that each unique balance was outstanding and then computed an adjusted principal

amount by multiplying the principal amount by the days outstanding divided by 365. Universal asserts that it then calculated the imputed interest amount by summing the adjusted principal and multiplying that sum by the long-term interest rate which Department used in its Preliminary Determination. Universal argues that this is the formula Department uses to compute loan benefits in countervailing duty investigations.

The petitioners argue that the Department should not modify its imputed interest expense calculation. The petitioners explain that, in the Preliminary Determination, the Department calculated the facts-available interest expense ratio for Universal by multiplying Universal's 2002 end-of-year loan balance by the long-term baht interest rate and then dividing that figure by Universal's 2002 cost of goods sold. The petitioners assert that the Department should continue to use this calculation in the final determination. The petitioners contend that the first time that Universal provided its average 2002 principal balance for the loan in question was during the cost verification although Universal had sufficient opportunity to provide this information prior to verification, which would have allowed the petitioners and the Department an opportunity to review and comment on it. The petitioners assert that verification is not the point at which respondents can or should be providing new information and, therefore, the Department should continue to rely on Universal's 2002 end-of-year loan balance and not make any changes to its Preliminary Determination facts-available interest expense calculation for Universal.

Department's Position: In calculating interest expense for a loan in the normal course of business, one would take into consideration the amount of time the principal balance is outstanding (daily loan balance). If the entire amount of a loan is not outstanding for the entire year, applying an

annual interest rate to the loan at year-end could result in an overstatement of interest expense. Therefore, it is more accurate to take into account the average daily loan balance in calculating interest expense. We have not rejected as new information Universal's average 2002 principal balance for its long-term loans from affiliates which it presented at verification. The year-end loan balance was listed on the balance sheet submitted prior to verification and, in our verification outline, we asked Universal to review the loans it obtained from its affiliated parties. The review Universal provided at verification included more detailed information on the loan balance outstanding at year-end. See Memorandum from Nancy Decker through Theresa L. Caherty to Neal M. Halper, "Verification Report on the Cost of Production and Constructed Value Data Submitted by Thai Plastic Bags Industries Group," dated April 2, 2004, at p. 32 ("UPC Cost Verification Report"). We often request more detailed supporting data at verification of amounts that respondents have presented in summary form in the response. Based on this information, we have recalculated the imputed interest to take into account the actual number of days that the principal amount of the loan was outstanding. See "Constructed Value Calculation Adjustments for Universal Polybag Co., Ltd. For the Final Determination," Memorandum to the File dated June 9, 2004.

7. Duty Drawback

Comment 8: TPBG argues that the Department should account for all duty-drawback claims in calculating the final antidumping duty margin. The respondent states that section 772(c)(1)(B) of the Act provides that export price should be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The respondent asserts that the

Department has a "two-pronged test" for determining whether an adjustment to U.S. price for a claimed duty drawback is appropriate. That is, TPBG contends, the Department considers whether there is a sufficient link between the import duty and the rebate and whether there are sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product. TPBG asserts that the Department acknowledges that Thailand operates a duty-drawback system and that valid claims for adjustments may be honored, citing Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 68336 (December 8, 2003), among others.

According to TPBG, it has satisfied the Department's two-pronged test with respect to all three of the duty-drawback programs for which TPBG claims it receives rebates. Specifically, the respondent claims that it has provided and the Department has reviewed and verified information and various official documents concerning the drawback programs which provide evidence that, for each type of drawback claimed, there is a sufficient link between the import duty and the rebate amount. TPBG also claims that Department officials confirmed during the sales verification of TPBG responses that there were sufficient imports of material inputs (resin) to account for the duty-drawback amounts received by TPBG for its exports of PRCBs. For these reasons, TPBG concludes that the Department should grant all duty-drawback claims for the final determination.

The petitioners argue that the Department should not grant any duty-drawback claims by TPBG since the respondent did not provide relevant information in a timely manner and because the information on the record does not meet the Department's two-pronged test.

According to the petitioners, TPBG did not provide timely or sufficient information regarding

the three duty-drawback programs. The petitioners contend that TPBG did not provide sufficient information in its original response nor did it provide sufficient information in its supplemental response to address the Department's specific questions regarding TPBG's duty- drawback claims. The petitioners state further that, although the Department's verification report established that TPBG provided additional documents addressing the deficiencies in its questionnaire responses, this underscores the fact that TPBG neglected to meet its burden of proof in a timely matter. The petitioners assert that the Department has declined to accept new factual information for the record at verification especially in cases where the respondent had an opportunity to provide the necessary information prior to verification, citing Silicomanganese from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000), and the accompanying Issues and Decision Memorandum at Comment IV-3 (Silicomanganese-PRC). The petitioners claim that the issue in Silicomanganese-PRC is similar to the issue at hand since the petitioners in this case did not have the opportunity to comment on the factual information concerning TPBG's duty-drawback claim nor did the Department have the opportunity to analyze the information prior to verification.

Regardless of whether the Department decides to accept the information provided by TPGB at verification, the petitioners argue that the information on the record still does not meet the Department's two-pronged test. The petitioners assert that, according to the information on the record, the respondent did not make sufficient imports of resin to account for all of the drawback claims on its export of PRCBs. The petitioners demonstrate how they reached this conclusion using information from TPBG's questionnaire responses and the Department's verification report. Furthermore, the

petitioners claim that TPBG neglected to demonstrate that the actual import duties paid or exempted on resin (or resin inputs) are linked directly to the duty drawback TPBG received.

The petitioners then focus on the duty-drawback program to which TPBG refers as the Duty Compensation Program. The petitioners first observe that TPBG claims that it receives a rebate on resin which it purchases from an affiliated supplier. In this case, the petitioners explain, the affiliated supplier purchases the resin from a Thailand manufacturer and the manufacturer is the entity paying the duties on raw material inputs for the resin it produces. Thus, the petitioners contend that the duty-drawback benefits are being transferred from the resin manufacturer to TPBG. The petitioners cite Silicomanganese from India: Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination, 67 FR 15,531 (April 2, 2002), and the accompanying Issues and Decision Memorandum at Comment 17 (Silicomanganese-India), and assert that the Department determined that the transfer of duty- drawback benefits demonstrate that the rebates on a company's exports are not tied directly to the duties paid on the imported inputs. Furthermore, the petitioners argue that, although TPBG claims that the manufacturer includes the duties which it pays on raw material inputs in the price to TPBG, TPBG has not provided any evidence to support this claim. In addition, the petitioners assert that TPBG has reported that it receives a tax-compensation ticket with respect to the Duty Compensation Program which it uses to pay duties on other imports. Petitioners argue that this information demonstrates that there is no link between the import duties paid on resin by other Thai manufacturers and the drawback received by TPBG for exports of PRCBs.

The petitioners contend further that the Duty Compensation Program uses a fixed-rate scheme for which the drawbacks received are not based on actual import duties paid. The petitioners point out

that the Department stated that the goal of the first prong of the two-pronged test is to establish that the amount of the import duties paid corresponds to the amount of the rebates received, citing Stainless Steel Wire Rod From India: Final Results of Antidumping Duty Administrative Review, 65 FR 31302 (May 17, 2000), and the accompanying Issues and Decision Memorandum at Comment 3 (Wire Rod). Furthermore, the petitioners state that the Department denied a duty-drawback adjustment under a scheme for which the drawback was calculated by applying a fixed-rate percentage to the freight-on-board value (FOB) of the respondent's exports of subject merchandise, citing Top-of-the-Stove Stainless Steel Cooking Ware from the Republic of Korea: Final Results and Rescission, in Part, of Antidumping Duty Administrative Review, 68 FR 7503 (February 14, 2003), and the accompanying Issues and Decision Memorandum at Comment 4 (Cooking Ware). Therefore, the petitioners argue that, if the Department decides to grant any of the duty drawbacks claimed by TPBG, it should at least deny the drawback claims under the Duty Compensation Program.

The petitioners add to their arguments that none of the information on the record indicates that TPBG has, in fact, used the duty-drawback program identified as the Section 19 "bis" Program, the purpose of which is to claim drawbacks for exports of subject merchandise purchased from affiliated supplier or from any other Thai companies.

Department's Position: We have determined that it is appropriate to allow for two of the three duty-drawback amounts TPBG claimed. TPBG reported three types of duty-drawback programs: 1) a program granted by the Board of Investment (BOI), the BOI Program, 2) a program granted under Section 19 bis of the Customs Act, the Section 19 bis Program, and 3) a program granted by the Board of Duty Compensation, the Duty Compensation Program. We have made adjustments to U.S.

price to account for drawbacks received with respect to the BOI Program and the Section 19 bis Program because we found that there is sufficient information on the record concerning these programs to support TPBG's drawback claims.

As acknowledged by TPBG and the petitioners, when evaluating whether to grant an adjustment to export price (EP) or CEP for a duty-drawback program, the Department considers whether there is a sufficient link between the import duty or taxes and the rebate and whether there are sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product. See Wire Rod, 65 FR 31302 at Comment 3. Accordingly, with respect to the BOI Program and the Section 19 bis Program, we determined that there is a sufficient link between the import duty and the rebate based on the information provided in the respondent's submission and data we collected during verification. This information includes duty calculation worksheets which tie to the Thai customs authorities' tracking system, copies of the Thai customs duty refund records, import and export declaration forms, and other documentation required by the Thai customs authorities. Furthermore, we were able to trace a substantial amount of the PRCBs exports to source documentation and confirm the outstanding balance of resin imports with Thai customs authorities at certain points during the POR. See CEP Sales Verification for Thai Plastic Bags Industries Co. Ltd (TPBI), Winner's Pack Co. (Winner's) and APEC Film Ltd. (APEC), in the investigation of Polyethylene Retail Carrier Bags from Thailand, dated April 15, 2004, (TPBG Verifcation Report), Universal Verification Report, at Exhibits 4-A and 4-B. This finding substantiates the respondent's reporting of the resin imports at Exhibit 25 of its December 23, 2003, supplemental response. Our verification of quantity and value confirms the reported quantity of PRCBs exported to the United

States. See TPBG Verification Report at Exhibit 2. Therefore, we also were able to determine that there were sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product with respect to the BOI Program and the Section 19 bis Program.

We did not make adjustments to U.S. price to account for drawbacks claimed by the respondent with respect to the Duty Compensation Program. As described in the Department's TPBG Verification Report, under the Duty Compensation Program, TPBG claims a rebate for resin it purchases from an affiliated supplier. See TPBG Verification Report at 10-11. We have determined that under this program there is not a sufficient link between the import duty and the rebate for several reasons. First, the manufacturer which supplies TPBG's affiliate actually pays the duties on raw material inputs which the manufacturer uses to produce resin. According to the information provided during verification, there is no documentation tracking the imports of raw material inputs and the applicable duties or taxes to compare to the claimed rebates on the exports of the manufactured products. Second, there is no evidence from TPBG's responses or from the information provided during verification that the duties were transferred in the price of the resin to TPBG. Third, TPBG calculated the duty-drawback adjustment by applying a fixed-rate percentage to the export F.O.B. value of the merchandise and not based on the actual duties or taxes paid on the imports of the raw material inputs. Furthermore, section 772(c)(1)(B) of the Act provides that EP or CEP should be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." The language of the statute directs us to add to U.S. price the amount of import

duties paid and rebated, not the rebate itself. With respect to the Duty Compensation Program, even with the information collected through our requests and at verification, we are not able to determine the amount of the actual duties or taxes imposed. Therefore, we cannot grant the respondent's claimed rebate amount.

Finally, we disagree with the petitioners' argument that TPBG's submitted information concerning its rebates program was not filed in a timely matter. The case cited by the petitioners (Silicomangenese-PRC) does not support their claim. In the Silicomanganese-PRC case, the respondent never reported certain by-products prior to verification. See Silicomanganese-PRC, 65 FR 31514, at Comment 4 (May 18, 2000). In this investigation, TPBG reported information concerning its claimed duty drawbacks in its original questionnaire response. TPBG also provided additional information in response to the Department's specific questions in its December 23, 2003, supplemental questionnaire response. The additional information the Department obtained concerning TPBG's duty-drawback programs during verification was in accordance with 19 CFR 351.301(b)(1) which established the time limits for submission of factual information.

8. Affiliations

Comment 9: TPBG argues that in the Preliminary Determination the Department concluded inappropriately that APEC's affiliated resin supplier was also affiliated with TPBI and Winner's Pack. TPBG states that, while the supplier in question is a shareholder of APEC, the supplier does not own shares in either TPBI or Winner's Pack. Nor, TPBG claims, is there any overlap in personnel, shareholders, directors, or officials between APEC's affiliated supplier and the other two respondents (i.e., TPBI and Winner's Pack). TPBG disputes that the supplier's affiliation with APEC and APEC's

affiliation with TPBI and Winner's Pack should render the supplier automatically an affiliate of TPBI and Winner's Pack. TPBG argues that an element of control must be demonstrated between the entities to consider them affiliated. Accordingly, TPBG contends that TPBI and Winner's Pack are not affiliated with APEC's resin

supplier; consequently, the respondent believes they are not subject to the affiliated-party provisions of the statute.

The petitioners dispute TPBG's claim that TPBI and Winner's Pack are not affiliated with APEC's supplier and therefore not subject to section 773(f) of the Act. The petitioners point out that TPBG has not cited any authority in support of its position and has characterized continually itself as a group throughout the investigation. The petitioners provide several references to TPBG's submissions which illustrate that the three companies both consider themselves to be and function as one entity. Likewise, the petitioners hold that the Department has treated the three companies consistently as one collapsed entity without objection from TPBG. Further, the petitioners comment that both the sales and cost verification reports sustain the treatment of the three companies as one entity. In support, the petitioners cite Ferro Union, Inc. Et al v. United States, 44 F. Supp. 2d 1310 (CIT 1999), where the court determined that affiliation is established where there is a corporate grouping under common management and control. The petitioners state that TPBI, APEC, and Winner's Pack are affiliated under

section 771(33)(F) of the Act, while APEC and its resin supplier are affiliated under section 771(33)(E) of the Act. Therefore, because TPBI, APEC, and Winner's Pack are considered one entity for this investigation, the petitioners argue that APEC's affiliated supplier is also affiliated to TPBI

and Winner's Pack.

Department's Position: We have treated the collapsed respondent (i.e., TPBI, APEC, and Winner's Pack) as a single entity for all aspects of our dumping analysis including for purposes of applying the affiliated-party provisions of the statute. It is clear that TPBI, APEC, and Winner's Pack are affiliated. Furthermore, there has been no objection to the treatment of these three parties as a collapsed entity for purposes of this investigation. Therefore, at issue here is whether a collapsed respondent should then be "uncollapsed" and treated as an individual entity for purposes of the application of the affiliated-party provisions of the statute. As stated above, these companies have been collapsed and it is the Department's long-standing policy to treat collapsed companies as a single entity. This policy is stated clearly in the regulations and has been affirmed by the courts. For example, see AK Steel Corp. et al. v. United States, 34 F. Supp. 2d 756, 763-66 (CIT 1998), where the court affirmed the Department's decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole. The CIT further found that "to treat collapsed parties as no longer separate affiliates for purposes of 19 U.S.C. section 1677B(f)(2)-(3)" is "not only permissible but preferable as a more logical, integrated application of the statute."

Because we are treating TPBI, APEC, and Winner's Pack as a single producer for purposes of this antidumping analysis, we have likewise treated the companies as a single entity for purposes of applying section 773(f) of the Act. Therefore, because the resin supplier was affiliated with one of the three companies comprising TPBG, we find it was affiliated with TPBG for the purpose of this investigation.

9. Miscellaneous Cost Issues

Comment 10: The respondent argues that TPBI's reported costs should be adjusted based on the Department's cost verification findings. The respondent points to two specific findings from the cost verification report that result in a net decrease in TPBI's costs. The respondent believes that recognizing only the adjustment that would increase costs would be unfair. Thus the respondent requests that the Department make the net adjustment to TPBI's costs.

The petitioners also request that the Department correct TPBI's total costs for the understatement found at the cost verification. Regarding the downward adjustment requested by TPBG, the petitioners point out that the discrepancy found by the Department's verifiers was related to production quantity, not production costs. The petitioners argue that an adjustment to production quantities is not the same as an adjustment to manufacturing costs. Based on the Department's standard section D questionnaire, the petitioners state that respondents are required to capture the total manufacturing costs from their financial accounting system in their reported per-unit costs. Further, the petitioners contend, it is normal practice for a respondent to adjust its costs for any variances found in the overall reconciliation of the financial statements to the reported costs. Because TPBI's reported costs were understated based on their overall reconciliation, the petitioners argue that the Department must adjust its costs.

Regarding the quantity discrepancy, however, the petitioners do not view the variance in the production quantity denominator to be the equivalent of a variance in the production cost numerator. The petitioners argue that, unlike the cost numerator, the quantities used in the per-unit cost calculations are fixed, absolute numbers taken from TPBI's production system. While the reported quantities were

taken from a single source, the petitioners state that the reported costs were derived from information from both the financial and cost accounting systems in addition to the figures from the audited financial statements. Consequently, the petitioners maintain the Department requires a reconciliation of these cost sources in the cost questionnaire. Accordingly, the petitioners claim that the Department should not reduce the adjustment to the reported costs that is required based on the overall reconciliation by the variance found in production quantities. Furthermore, the petitioners maintain that, should the Department decide to adjust TPBI's reported costs for the production quantity variance, it has no means by which to determine which CONNUMs should be adjusted. Because the actual adjustments to quantities would vary by CONNUM, the petitioners believe that an overall, across-the-board adjustment would be inaccurate. Finally, because TPBG has not placed the information necessary to make such an adjustment on the record, the petitioners urge the Department to reject the respondent's request for an adjustment to production quantities.

Department's Position: We have adjusted TPBI's costs in the final determination for both of our verification findings. The petitioners and the respondent agree that we should account for the understatement of costs we found in the overall reconciliation of TPBI's costs for the final determination but the petitioners argue that a second finding which results in a "downward adjustment" should not be made. The petitioners observe in their rebuttal brief that the overstatement is related to production quantities, yet the understatement is related to production costs. While we agree that these variances affect different components of the calculation of the reported per-unit costs, this does not preclude us from making an adjustment when appropriate. Furthermore, the general requirement by the Department that all respondents complete a reconciliation of costs does not set a preference or

limitation on the type and amount of adjustment that may be made. Although we agree with the petitioners that the costs flow through both the financial and cost accounting systems and a reconciliation of the costs from these systems is necessary, we disagree with the petitioners that the production quantities are absolute numbers from only one system that are not subject to error or adjustment. As we mentioned in the cost verification report, TPBI's cost accounting system is maintained on an Excel spreadsheet that is not integrated with its production system. See the Cost Verification Report at 10. Consequently, production data is entered manually and subject to human error. Also, we disagree that we cannot make an overall adjustment. TPBI's reported cost database includes all production (i.e., non-subject, third-country, and reportable CONNUMs). Furthermore, the Department typically makes global adjustments for such findings, and the adjustment for the variance found in the overall reconciliation is made in the same manner. Given the nature and size of the cost verification findings, the Department to believes that an overall adjustment is appropriate.

10. Pre-Verification and Verification Corrections

Comment 11: The petitioners argue that the cost of production reported by TPBG's affiliated reseller should be adjusted for errors the Department discovered at the cost verification. The respondent did not comment on this issue.

Department's Position: In this instance, the reference to cost of production pertains to TPBG's estimation of the affiliated reseller's purchase price (TPBG adjusted the negotiated rate for the resin for a presumed discount that was given to its affiliated reseller by the producer of the resin) plus amounts calculated for SG&A expenses experienced by the reseller. We have adjusted the affiliated reseller's acquisition cost plus SG&A to correct errors found at the cost verification.

Comment 12: The petitioners urge the Department to correct the errors it discovered during the cost verification in TPBG's cost of subcontracted products. The respondent did not comment on this issue.

Department's Position: We agree with the petitioners and have corrected the cost of subcontracted products for the final determination.

Comment 13: The petitioners maintain that at the cost verification the Department discovered that APEC's interest income offset was not related to short-term assets. Thus, the petitioners request that the Department disallow the short-term interest offset and recalculate APEC's financial expense rate for the final determination. The respondent did not comment on this issue.

Department's Position: We agree with the petitioners and have disallowed the interest income offset to APEC's financial expense rate calculation for the final determination because such income was not generated by short-term assets.

Comment 14: The petitioners argue that the Department should continue to adjust APEC's total cost of manufacturing for an unreconciled difference, revise TPBI's general and administrative (G&A) rate, and revise Winner's Pack's financial expense rate. The petitioners state that, at the cost verification, the Department confirmed that the adjustments to TPBI's G&A rate and to Winner Pack's financial expense rate were correct. Additionally, the petitioners assert that, while APEC's unreconciled cost difference was reduced, the Department still found a discrepancy in the company's cost reconciliation. Therefore, the petitioners maintain that the Department should adjust for these items in the final determination. TPBG did not comment on this issue.

Department's Position: We agree with the petitioners and have continued to adjust TPBG's

reported costs in the final determination for the above findings.

Comment 15: TPBG requests that the Department incorporate corrections and its pre-verification submission in the final determination.

The petitioners respond that one of the corrections to which TPBG refers involves the recalculation of the home-market ISE factor by the Department. The petitioners argue that the Department's recalculation is incorrect and they use data from the sales verification report to demonstrate the correct calculation.

Department's Position: The corrections which the Department found during verification and in the pre-verification submission should be incorporated for the final determination. We also recognize that we miscalculated TPBG's home-market ISE factor. Therefore, we have made corrections to the ISE calculation and have used the revised factor in the final margin calculation. For details concerning all changes and corrections incorporated since the Preliminary Determination, see the Final Analysis Memorandum for TPBG, dated June 9, 2004.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree _____

_____

James J. Jochum
Assistant Secretary
for Import Administration

_____

(Date)